

**252.225-7001****48 CFR Ch. 2 (10-1-10 Edition)**

(2) The offeror certifies that the following end products are qualifying country end products:

(Line Item Number)

(Country of Origin)

(3) The following end products are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (ii) of the definition of “domestic end product”:

(Line Item Number)

(Country of Origin (If known))

(End of provision)

[68 FR 15634, Mar. 31, 2003; 68 FR 25088, May 9, 2003, as amended at 70 FR 35546, June 21, 2005; 74 FR 2423, Jan. 15, 2009; 74 FR 68384, Dec. 24, 2009]

**252.225-7001 Buy American Act and Balance of Payments Program.**

As prescribed in 225.1101(2), use the following clause:

**BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (JAN 2009)**

(a) *Definitions.* As used in this clause—

(1) *Commercially available off-the-shelf (COTS) item*—

(i) Means any item of supply (including construction material) that is—

(A) A commercial item (as defined in paragraph (1) of the definition of “commercial item” in section 2.101 of the Federal Acquisition Regulation);

(B) Sold in substantial quantities in the commercial marketplace; and

(C) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(ii) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102), such as agricultural products and petroleum products.

(2) *Component* means an article, material, or supply incorporated directly into an end product.

(3) *Domestic end product means*—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if—

(A) The cost of its qualifying country components and its components that are mined, produced, or manufactured in the United

States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(1) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(2) It is inconsistent with the public interest to apply the restrictions of the Buy American Act; or

(B) The end product is a COTS item.

(4) *End product* means those articles, materials, and supplies to be acquired under this contract for public use.

(5) *Foreign end product* means an end product other than a domestic end product.

(6) *Qualifying country* means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.

(7) *Qualifying country component* means a component mined, produced, or manufactured in a qualifying country.

(8) *Qualifying country end product means*—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States.

(9) *United States* means the 50 States, the District of Columbia, and outlying areas.

(b) This clause implements the Buy American Act (41 U.S.C. Section 10a-d). In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for an end product that is a COTS item (see section 12.505(a)(1) of the Federal Acquisition Regulation). Unless otherwise specified, this clause applies to all line items in the contract.

(c) The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in

the Buy American Act—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, the Contractor shall deliver a qualifying country end product or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

[68 FR 15634, Mar. 31, 2003, as amended at 70 FR 35546, June 21, 2005; 74 FR 2423, Jan. 15, 2009]

**252.225-7002 Qualifying country sources as subcontractors.**

As prescribed in 225.1101(3), use the following clause:

**QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (APR 2003)**

(a) *Definition.* *Qualifying country*, as used in this clause, means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation (FAR) Supplement.

(b) Subject to the restrictions in section 225.872 of the Defense FAR Supplement, the Contractor shall not preclude qualifying country sources or U.S. sources from competing for subcontracts under this contract.

(End of clause)

[68 FR 15634, Mar. 31, 2003]

**252.225-7003 Report of intended performance outside the United States and Canada—Submission with offer.**

As prescribed in 225.7204(a), use the following provision:

**REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA—SUBMISSION WITH OFFER (OCT 2010)**

(a) *Definition.* *United States*, as used in this provision, means the 50 States, the District of Columbia, and outlying areas.

(b) The offeror shall submit, with its offer, a report of intended performance outside the United States and Canada if—

(1) The offer exceeds \$12.5 million in value; and

(2) The offeror is aware that the offeror or a first-tier subcontractor intends to perform any part of the contract outside the United States and Canada that—

(i) Exceeds \$650,000 in value; and  
(ii) Could be performed inside the United States or Canada.

(c) Information to be reported includes that for—

(1) Subcontracts;

(2) Purchases; and

(3) Intracompany transfers when transfers originate in a foreign location.

(d) The offeror shall submit the report using—

(1) DD Form 2139, Report of Contract Performance Outside the United States; or

(2) A computer-generated report that contains all information required by DD Form 2139.

(e) The offeror may obtain a copy of DD Form 2139 from the Contracting Officer or via the Internet at <http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>.

(End of provision)

[70 FR 20839, Apr. 22, 2005, as amended at 70 FR 35546, June 21, 2005; 71 FR 75893, Dec. 19, 2006; 75 FR 45074, Aug. 2, 2010]

**252.225-7004 Report of Intended Performance Outside the United States and Canada—Submission after Award.**

As prescribed in 225.7204(b), use the following clause:

**REPORT OF INTENDED PERFORMANCE OUTSIDE THE UNITED STATES AND CANADA—SUBMISSION AFTER AWARD (OCT 2010)**

(a) *Definition.* *United States*, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Reporting requirement.* The Contractor shall submit a report in accordance with this clause, if the Contractor or a first-tier subcontractor will perform any part of this contract outside the United States and Canada that—

(1) Exceeds \$650,000 in value; and

(2) Could be performed inside the United States or Canada.

(c) *Submission of reports.* The Contractor—

(1) Shall submit a report as soon as practical after the information is known;

(2) To the maximum extent practicable, shall submit a report regarding a first-tier subcontractor at least 30 days before award of the subcontract;

(3) Need not resubmit information submitted with its offer, unless the information changes;

(4) Shall submit all reports to the Contracting Officer; and

(5) Shall submit a copy of each report to: Deputy Director of Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), OUSD(AT&L)DPAP(CPIC), Washington, DC 20301-3060.

(d) *Report format.* The Contractor—

(1) Shall submit reports using—